Supreme Court, U.S.
FILED

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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

DASS, DR. MULK RAJ
a/k/a "Dr/ Dass".

PETITIONER

V.

UNITED STATES OF AMERICA,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

LOUIS DUGAS, JR.
1804 N. 16th St.
Orange, Texas 77630
(409) 883-3506
Attorney for Petitioner

QUESTIONS PRESENTED

FBI agents using fictitious names, created a spurious company; falsely claiming they sought financial help in building an Italian cruise line ship, purportedly subsidized by the Belgian government, initiated contact with petitioner Dass and induced Dass to sign a contract agreeing to pay $100,000.00 to Dass to produce a letter of commitment for the cruise ship construction.

I.

Did the court of appeals err in holding that the government's conduct was not outrageous; and was DASS deprived of due process?

II.

Did the contract preclude petitioner's conviction?

LIST OF ALL PARTIES

Dr. Mulk Raj Dass

Louis Dugas, Jr.
1804 North 16th Street
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Attorney for Dr. Mul Raj Dass

United States of America

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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

UNITED STATES OF AMERICA, PETITIONER

V.

DASS, DR. MULK RAJ
a/k/a "Dr. Dass",

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE UNITED STATES:

DR. MULK RAJ DASS petitions for a writ of certiorari to review the judgment of the United States Court of Appeals Third Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (Ap., infra, 1a-8) is not reported.

JURISDICTION

The judgment of the court of appeals (App., infra, 9a) was entered on June 9, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

The FBI office in Atlantic City, New Jersey created a spurious brokerage company to look at advanced fee schemes. The alleged purpose of the brokerage company was obtaining financing for Italian Cruise Lines, another fictitious company. The agents used false names in operation of the brokerage company. On

February 27th, 1991, the FBI agents called Dass, who was in Atlanta, Ga. The agent told Dass he was seeking a letter of credit. On 44 occasions, the agent and Dass spoke over the telephone. The agent in charge of the phony brokerage house prepared a contract that was signed by the agent and Dass. This contract provided that Dass would receive the sum of $100,000 if he provided the builders of the cruise line ship a letter of credit. Dass presented a letter of credit, but the government did not accept it. No money was paid Dass, who was indicted and convicted for wire fraud.

REASONS FOR GRANTING THE WRIT

This is an unusual case. It does not involve drugs or bribery. It is important to decide the extent to which the government will be allowed to manufacture crime and more particularly crime in the

business place. Consideration must be given to the citizens who perform their part of a contract only to find that performance is not forthcoming, because the government created a fraud.

To allow the government to continue it's deceptive ways is to place a chill on the market place. In this case the government met the test set out in United States v. Russell, 423 U. S. 423, 434 (1973).

"The function of law enforcement is the prevention of crime and the apprehension of criminals. Manifestly, that function does not include the manufacturing of crime." The court of appeals decision marks a departure from the legal principles stated by this Court. The court of appeals ignored the fact that

the government induced the commission of the offense in order to prosecute.

In the scenario presented by the government, everything was false. To prosecute Dass for wire fraud and let the instigators go free violates due process. Dass received nothing as the contract was not performed. He committed no crime, but the government did.

ON THE CONTRACT

The government prepared, presented and provided to Dass a contract. This contract was signed by the agent for the government and Dass. Under the Restatement of Contracts 2d, §162, Misrepresentation, the contract is voidable because the misrepresentations by the government were material. The contract could never have been consummated, because the government could not have performed. If the government was not required to perform

then Dass should not have to bear the stigma of a conviction in such a case as this.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Third Circuit.

Respectfully submitted,

LOUIS DUGAS, JR.
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(409) 883-3506
TSB No. 06173000

ATTORNEY FOR PETITIONER

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 92-5547

UNITED STATES OF AMERICA

v.

DASS, DR. MULK RAJ
a/k/a "Dr. Dass",
Appellant

Appeal From the United States District Court
for the District of New Jersey
(D.C. Criminal No. 91-00564-01)
District Judge: Honorable William G. Bassler

Submitted Under Third Circuit LAR 34.1(a)
April 11, 1994

Before: BECKER, MANSMANN, and SCIRICA,
Circuit Judges.

(Filed May 6, 1994)
MEMORANDUM OPINION

BECKER, Circuit Judge.

This is an appeal from a judgment in a criminal case, in which Appellant Mulk Raj Dass was convicted by a jury of four counts of wire fraud, 18 U.S.C. §§ 2, 1343. The conviction was the product of an FBI undercover investigation of defendant's "advanced-fee financial transactions."

Appellant owned and operated a company known as Apex Investment Securities, Inc., which was purportedly engaged in the business of securing venture capital from financial institutions on behalf of individuals and companies. Using information from another investigation, a special agent approached Dass falsely representing that he was a broker seeking venture capital for a project involving the construction of a cruise ship. According to the evidence

(as viewed in the light most favorable to the government), appellant agreed to try to obtain construction financing of $25 million. Pursuant to this agreement, appellant required, and the undercover agent agreed to pay, a total finder's fee of approximately $6.5 million, $100,000 of which was payable in advance. Appellant, however, never intended to obtain construction financing, but instead intended to retain the advance fee for himself.

The evidence further established that appellant, in order to induce payment of the advance fee, made false representations to the agent (i) regarding his intention and ability to obtain financing, including false statements about his ability to produce a legitimate letter of credit from Manufacturers

Hanover Bank in the amount of $25 million, and (ii) about his past successes in obtaining financing for other clients. Indeed, the appellant defaulted on his commitment to produce a large letter of credit from Manufacturers Hanover Bank, which, as it turns out, had never heard of him. Instead he produced only a amorphous (and legally deficient) undertaking from a dubious business concern. The government introduced four fax transmissions that served as the basis for federal jurisdiction.

Appellant's principal contention is that his conviction was a product of outrageous government conduct in violation of due process. He relies on United States v. Twigg, 588 F.2d 373 (3rd Cir.

1978), but Twigg is an extreme case[1] and is inapposite here. We have not extended Twigg to less egregious circumstances. See, e.g., United States v. Ward, 793 F.2d 551, 554 (3d Cir. 1986), cert. denied, 107 S. Ct. 98 (1986). For example in United States v. Jannotti, 673 F.2d 578, 607-08

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[1] In Twigg a government agent persuaded the defendant to construct a methamphetamine laboratory. The government supplied the chemicals, glassware, and physical plant. The government agent, who alone possessed the necessary expertise, ran the operation, and the defendant acted as the government agent's direction. Once the drugs were manufactured, the defendant carried them to this car. He was arrested driving down the road. See 588 F.2d at 325-26, 330-31.

(3d Cir.) (in banc), cert. denied, 457 U.S. 1106, 102 S. Ct. 2906 (1982), we made clear that Twigg applies only to cases in which the governments conduct was "intolerable" because "the government initiated and was actively involved in the operation of the criminal enterprise itself." See also United States v. Gonzalez, 927 F.2d 139, 144-45 (3d Cir. 1991) (distinguishing Twigg in a drug case where the government agents arranged the sale of the narcotics to be purchased by the defendant and the government informant operated on a "contingent fee" basis); United States v. Driscoll, 852 F.2d 84 (3d Cir. 1988) (distinguishing Twigg where postal authorities sold the defendant child pornography through the mail). As there was nothing egregious

about the government's conduct here, Twigg does not help the Appellant.

Appellant alternatively asserts that his conviction must be reversed under the general contracts law doctrine of frustration of purpose because the written contract executed between him and the undercover agent could not have been performed by the government. We find this argument, which inexplicably conflates a civil law defense to liability with a criminal law defense to guilt and which is unsupported by any authority, difficult to follow. Moreover, insofar as we understand it, it proves too much: to the extent it extends to he criminal law the contract doctrine of impossibility of performance, it severely hampers the government from conducting any undercover financial fraud investigations involving

written contracts, because impossibility would often afford a defense.[2] Yet we have stated time and time again that we will not lightly hamper the government's undercover criminal investigations, even when we disapprove of the means employed. See, e.g., United States v. Martino, 825 F.2d 754, 763 (3d Cir. 1987). In any event, appellant's criminal fraud was complete before the government's performance on its obligation under the contract became due. Appellant's second argument must therefore be rejected.

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[2] We also note the enormous potential impact of appellant's theory on the government's capacity to convict on conspiracy counts involving undercover government agents.

The judgment of the district court will be affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 92-5547

UNITED STATES OF AMERICA

v.

DASS, DR. MULK RAJ
a/k/a "Dr. Dass",

Appellant

Appeal From the United States District Court
for the District of New Jersey
(D.C. Criminal No. 91-00564-01)
District Judge: Honorable William G. Bassler

Submitted Under Third Circuit LAR 34.1(a)
April 11, 1994

Before: BECKER, MANSMANN, and SCIRICA,
Circuit Judges.

JUDGMENT

This case came on to be heard on the record from the United States District

Court for the District of New Jersey and was submitted on April 11, 1994. On consideration whereof, it is now here

ORDERED AND ADJUDGED by this court that the judgment of the district court entered September 29, 1992 be and the same is hereby affirmed.

ATTEST:

Chief Deputy Clerk

DATED: May 6, 1994

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 92-5547

UNITED STATES OF AMERICA

v.

DASS, DR. MULK RAJ
a/k/a "Dr. Dass",
Appellant

(D.C. Criminal No. 91-00564-01)

Before: BECKER, MANSMANN, and SCIRICA,
Circuit Judges.

SUR PETITION FOR PANEL REHEARING

This petition for rehearing filed by Appellant, having been submitted to the judges who participated in the decision of this court and no judge who concurred in the decision having asked for

rehearing, the petition for panel rehearing is DENIED.

BY THE COURT:

_____

Circuit Judge

DATED: June 9, 1994